

**REMARKS**

Claims 1-13 are pending in this application. Claims 8-13 are withdrawn from consideration. By this Amendment, claim 1 is amended to overcome a 35 U.S.C. §112, second paragraph, rejection. Claim 10 is amended to conform with U.S. patent practice. Unnecessary drawing reference numerals are removed from claims 1, 3, 5, 8 and 9. A typographical error in claim 12 is corrected. No new matter is added by this Amendment.

**I. Rejection Under 35 U.S.C. §112, second paragraph**

Claims 1-7 were rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. In particular, the Patent Office alleges that the recitation "unfrozen plate of food substance is positioned in a freezer with a view to freezing the plate of food substance..." is indefinite. This rejection is respectfully traversed.

Applicant has amended claim 1 to recite that the packaging is positioned in a freezer to freeze the plate of food substance. Applicant submits that claim 1 is definite. Thus, reconsideration and withdrawal of the rejection are respectfully requested.

**II. Rejections Under 35 U.S.C. §103(a)**

**A. WO '064 in view of JP '196**

Claims 1, 3 and 4 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over WO 97/06064 ("WO '064") as evidenced by WO 96/02422 ("WO '422") in view of JP 08-196196 ("JP '196"). This rejection is respectfully traversed.

WO '064 teaches a block carton for lining freezing frames for receiving a fresh food material, for example, fish. The block cartons are simply carton blanks that are prepared such that they have a bottom panel, two opposing long side panels, two short side panels and a lid panel extending from one of the long side panels. By mounting a carton blank in a freezing frame, the side panels are raised to an upright position along the inner sides of the frame. After filling, the lid panel is swung inwardly over the filling so that the filling is covered by

carton on all side faces of the block. Further, after filling, the units are conveyed to freezing in a shelf type freezer for freezing, after which they are knocked out of the freezing frames and forwarded to factories for further processing.

JP '196 teaches a method of packaging fresh meat products that provides a consistent weight for each tray. The method aims to compensate for differences in density of a fresh meat product by decreasing the extrusion outlet by equipment in order to keep the weight of the fresh meat product consistent. See paragraph 6 of JP '196. Thus, Nakano provides an extruder in combination with a cutter and a weighing conveyor for filling a fixed weight of fresh meat product in trays.

In this respect, the trays must be a particular size in order to contain a consistent weight of fresh meat product, even though the density of the fresh meat product varies and the volume of the tray occupied by the extruded fresh meat product alters.

As is clear, neither WO '064 nor JP '196, in combination or alone, teaches or suggests extruding a plate of unfrozen food substance as recited in claim 1. Thus, the extruded unfrozen food has a shape not taught or suggested by any of the cited references.

Applicant also submits that it would not have been obvious to one of ordinary skill in the art to modify WO '064 with an extruder in combination with a cutter and a weighing conveyor as taught by JP '196.

First, one of ordinary skill in the art would know that the extruder in combination with the cutter and the weighing conveyor as taught by JP '196 requires block liners of a large enough size to contain a required amount (i.e., weight) of fresh meat product even though the density of the fresh meat product varies. Thus, the block liners would not be consistently filled as in the method recited in claim 1.

Second, due to the fact that the orifice of the extruder nozzle is decreased in order to compensate for the varying density of the fresh meat product and the desire to obtain a

constant weight of the packaged food material, the block carton is not filled completely. At the very least, the carton is not filled such that the unfrozen food material is completely enclosed by the bottom panel, cover panel and side panels of the carton packaging as recited in claim 1.

Moreover, WO '064 teaches a method by which the block carton is positioned in a freezing frame that consists of a bottom and four side faces, such that it is detected whether a corner flap is wrongly placed. If one or more of the corner flaps is/are wrongly placed, the corner flap must be rearranged at the outside of the side panel. Thus, the corner flaps will not protrude into the food material when filling the food material into the block carton. See page 1, lines 25-26 of WO '064 stating that "which after the filling of the carton lining in the freezing frame may be swung inwardly over the filling." Further, see page 2, lines 31-33 of WO '064 where the filling of material into the block carton is described in combination with the detection "whether a corner flap is wrongly placed, so that this fault may be corrected already before the filling of material to be frozen."

However, one of ordinary skill in the art would know that in order to have the corner flaps of the block carton (if placed at the inside) protruding into the food material, a leveling/smoothing of the food material would still be required subsequent to filling the food material. This problem of corner flaps protruding into the food material is solved by marking the corner flaps, thereby ensuring that an inspection would detect whether a corner flap is wrongly placed and possibly subsequently corrected.

By modifying the method taught by WO '064 with the extruder in combination with the cutter and the weighing conveyor taught by JP '196, one of ordinary skill in the art would know that in order to avoid corner flaps protruding into the food material, he will first have to inspect the erected liner prior to the filling to insure that the corner flaps are placed correctly at the outside and then perform a manual leveling/smoothing of the food material subsequent

to the filling of the food material in order to ensure a complete filling of the block liner. Otherwise, if an inspection is not performed, he will have to accept that the block carton is only partially filled with food material.

Consequently, by combining the teachings of WO '064 and JP '196, one of ordinary skill in the art merely achieves a more complicated method of completely filling the food material in a block liner.

In contrast, the method recited in claim 1 achieves a more simple and inexpensive packing and freezing process. This is done by extruding a plate of unfrozen food substance as recited in claim 1.

Since the plate of unfrozen food is directly filled, an easy and reliable positioning of the plate of food substance on the bottom face of the packaging is ensured. Thus, leveling/smoothing of the food material subsequent to extruding the food substance is not required in the method recited in claim 1.

In summary, the method recited in claim 1 is based on the realization that a plastic bag is not necessary when positioning the extruded plate onto the erected carton packaging. The block carton provides both proper protection against freezer burn during the freezing process as well as the final packaging, both in one single step. Moreover, the method recited in claim 1 prevents corner flaps from protruding into the food material when positioning the extruded plate onto the erected block carton, whereby a more simple and inexpensive packaging and freezing process is obtained.

For at least the foregoing reasons, Applicant submits that claims 1, 3 and 4 are patentable over WO '064 and JP '196. Thus, reconsideration and withdrawal of the rejection are respectfully requested.

**B. WO '064 in view of JP '196, further in view of Vogt**

Claim 2 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over WO '064 as evidenced by WO '422 in view of JP '196, further in view of U.S. Patent No. 1,953,520 ("Vogt"). This rejection is respectfully traversed.

Vogt does not remedy the deficiencies of WO '064 and JP '196. In particular, Vogt does not teach or suggest extruding a plate of unfrozen food substance as recited in claim 1. Further, as discussed above, one of ordinary skill in the art would not have combined WO '064 and JP '196, and even if combined, the method of packaging and freezing food substance as recited in claim 1 would not have been achieved.

Accordingly, Applicant submits that claim 2 is patentable over WO '064, JP '196 and/or Vogt. Thus, reconsideration and withdrawal of the rejection are respectfully requested.

**C. WO '064 in view of JP '196, further in view of Battistella**

Claims 5, 6 and 7 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over WO '064 as evidenced by WO '422 in view of JP '196, further in view of U.S. Patent No. 4,907,421 ("Battistella"). This rejection is respectfully traversed.

Battistella does not remedy the deficiencies of WO '064 and JP '196. In particular, Battistella does not teach or suggest extruding a plate of unfrozen food substance as recited in claim 1. Further, as discussed above, one of ordinary skill in the art would not have combined WO '064 and JP '196, and even if combined, the method of packaging and freezing food substance as recited in claim 1 would not have been achieved.

Accordingly, Applicant submits that claims 5, 6 and 7 are patentable over WO '064, JP '196 and/or Battistella. Thus, reconsideration and withdrawal of the rejection are respectfully requested.

**D. Shaw in view of Battistella**

Claims 1, 4 and 5 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 4,052,836 ("Shaw") in view of Battistella. This rejection is respectfully traversed.

Shaw teaches filling cooked or blanched foods in the form of sticky masses containing water, wherein the foods are first placed into a hopper and gravitated into pockets on the outer periphery of a drum rotatable about a generally horizontal axis above a conveyor carrying a number of open packages. As the drum rotates, a mass of the food product is received in each pocket as the drum moves beneath the pocket.

Shaw does not teach or suggest extruding a plate of food material as recited in claim 1. Further, Shaw does not teach or suggest any actual means for extruding the food material. The apparatus does describe an opening 58. However, this opening is in the receiving position and in the subsequent filling position having the same dimensions. Therefore, this does not describe an extrusion process as required in claim 1.

Battistella teaches an automatic plate freezer having a plurality of separate uniformly shaped freezing frames utilized for the process of freezing of food products.

By combining Shaw and Battistella as suggested by the Patent Office, one of ordinary skill in the art would achieve a process of filling a food material into a package of uniform size, following which the individual package is placed in a freezing frame and placed in the plate freezer with the purpose of freezing the food material.

This process is quite complicated, and does not provide a simple and inexpensive packing and freezing process as is recited in claim 1.

For at least the foregoing reasons, Applicant submits that claims 1, 4 and 5 are patentable over Shaw and Battistella. Thus, reconsideration and withdrawal of the rejection are respectfully requested.

**E. Shaw in view of Battistella, further in view of Vogt**

Claim 2 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Shaw in view of Battistella and further in view of Vogt. This rejection is respectfully traversed.

Vogt does not remedy the deficiencies of Shaw and Battistella. In particular, Vogt does not teach or suggest extruding a plate of unfrozen food substance as recited in claim 1.

Accordingly, Applicant submits that claim 2 is patentable over Shaw, Battistella and/or Vogt. Thus, reconsideration and withdrawal of the rejection are respectfully requested.

**III. Conclusion**

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-13 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,

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Date: March 14, 2005

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